

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

REAL VIEW, LLC

Plaintiff,

v.

20-20 TECHNOLOGIES, INC.,

Defendant.

CIVIL ACTION NO. 07-12157

20-20 TECHNOLOGIES, INC.,

Counterclaim Plaintiff

v.

REAL VIEW, LLC

Counterclaim Defendant, and

BORIS ZELDIN and LEONID PERLOV

Additional Party Defendants
in Counterclaim

20-20 TECHNOLOGIES, INC.’S MOTION FOR JUDGMENT AS A MATTER OF LAW

Pursuant to Fed. R. Civ. P. 50, 20-20 Technologies, Inc. (“20-20”) hereby moves the Court to grant judgment as a matter of law in 20-20’s favor on Real View, LLC’s complaint (“Real View”), denying the declaratory judgment sought by Real View. Additionally, 20-20 requests the Court grant judgment as a matter of law in 20-20’s favor on Count I of 20-20’s counterclaim that Real View infringed upon 20-20’s copyrights in 20-20 Design versions 6.1, 6.4 and 8.1. The evidence presented at trial, including expert testimony and hundreds of comparison screenshots of the main screen displays of both programs, establishes that the main screen displays of the two software programs are virtually identical and differ by no more than a trivial

degree.¹ Accordingly, the Court should enter judgment as a matter of law that Real View infringed upon 20-20's copyrights in 20-20 Design.

I. A Reasonable Jury Could Only Find that the Main Screen Displays of 20-20 Design and ProKitchen Are Virtually Identical

20-20 has presented substantial evidence to demonstrate that the main screen displays of 20-20 Design and ProKitchen are virtually identical. 20-20 has presented hundreds of screenshots comparing the main screen display of 20-20 Design versions 6.1, 6.4 and 8.1 to the main screen display of ProKitchen 2.0 and 3.0. 20-20's expert Prof. Randall Davis testified that after comparing the main screen displays of 20-20 Design versions 6.1, 6.4 and 8.1 with the main screen display of ProKitchen 2.0 and 3.0, "the differences in the overall main screen display really are trivial." Davis Tr. Day 5 at 17:5-8; 17:14-16; 17:22-23. A reasonable jury would not have a legally sufficient evidentiary basis to find that the main screen displays of 20-20 Design and ProKitchen are not virtually identical.

II. A Reasonable Jury Could Only Find that the Main Screen Displays of 20-20 Design and ProKitchen Are Substantially Similar

20-20 has requested the Court apply the "substantial similarity" standard when comparing the main screen displays of 20-20 Design and ProKitchen. Given the evidence of the striking similarities of the main screen displays of both programs, a reasonable jury would not have a legally sufficient evidentiary basis to find that the main screen displays of 20-20 Design and ProKitchen are not substantially similar.

¹ 20-20 objects to the "virtually identical" standard, but understands that the Court intends to give this instruction.

CONCLUSION

For the foregoing reasons, 20-20 respectfully requests the Court enter judgment as a matter of law denying Real View's request for declaratory judgment, and granting 20-20's claim of copyright infringement.

Dated: January 28, 2011

Respectfully submitted,

/s/ Timothy C. Blank
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Certificate of Service

I hereby certify that on January 28, 2011, a true and correct copy of the foregoing document was served upon opposing counsel by electronic case filing.

/s/ Timothy C. Blank